

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Mary E. Jacobs, IRA, Claimant v. McDonald Investments, Inc. and Matthew G. Presjak,  
Respondents

Case Number: 04-07608

Hearing Site: Portland, Oregon

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Nature of the Dispute: Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Richard M. Layne, Esq.  
Layne & Lewis LLP  
Portland, Oregon

For Respondents:

Bruce L. Campbell, Esq.  
Miller Nash LLP  
Portland, Oregon

**CASE INFORMATION**

Statement of Claim filed: October 29, 2004

Claimant's Uniform Submission Agreement signed: November 19, 2004

Joint Statement of Answer filed by Respondents: January 18, 2005

Respondent McDonald Investments Inc.'s Uniform Submission Agreement signed: January 21,  
2005

Respondent Matthew G. Presjak's Uniform Submission Agreement signed: Undated

### **CASE SUMMARY**

Claimant alleged violation of the Oregon Securities Act and common law negligence arising from the purchase of Kmart bonds.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and set forth the following affirmative defenses: statute of limitations, contributory negligence and comparative fault, mitigation of damages, good faith, ratification, waiver and estoppel.

### **RELIEF REQUESTED**

Claimant requested the sum of \$109,236.86 in compensatory damages, per diem interest in the amount of \$20.85 from October 29, 2004 until paid, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

|                          |             |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 300.00 |
|--------------------------|-------------|

### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm McDonald Investments, Inc. is a party and the following fees are assessed:

|                            |                      |
|----------------------------|----------------------|
| Member Surcharge           | = \$ 1,700.00        |
| Pre-Hearing Process Fee    | = \$ 750.00          |
| <u>Hearing Process Fee</u> | = \$ 2,750.00        |
| <b>Total Member Fees</b>   | <b>= \$ 5,200.00</b> |

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

|   |                      |
|---|----------------------|
| (1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session | = \$ 450.00          |
| Pre-hearing conference: June 27, 2005   | 1 session            |
| (1) Pre-hearing conference session with the Panel @ \$1,125.00/session          | = \$ 1,125.00        |
| Pre-hearing conference: February 28, 2005                                       | 1 session            |
| (4) Hearing sessions @ \$1,125.00/session                                       | = \$ 4,500.00        |
| Hearings: November 30, 2005   | 2 sessions           |
| December 1, 2005  | 2 sessions           |
| <b>Total Forum Fees</b>   | <b>= \$ 6,075.00</b> |

1. The Panel assessed \$3,037.50 of the forum fees to Claimant.
2. The Panel assessed \$3,037.50 of the forum fees jointly and severally to Respondents.

### **Fee Summary**

1. Claimant is charged with the following fees and costs:

|  |                       |
|--|-----------------------|
| Initial Filing Fee                         | = \$ 300.00           |
| <u>Forum Fees</u>                          | <u>= \$ 3,037.50</u>  |
| Total Fees                                 | = \$ 3,337.50         |
| <u>Less payments</u>                       | <u>= \$(1,425.00)</u> |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 1,912.50</b>  |


2. Respondent McDonald Investments, Inc. is charged with the following fees and costs:
- |  |                       |
|--|-----------------------|
| Member Fees                                | = \$ 5,200.00         |
| <u>Less payments</u>                       | <u>= \$(5,200.00)</u> |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 0.00</b>      |
3. Respondents are charged jointly and severally with the following fees and costs:
- |  |                      |
|--|----------------------|
| <u>Forum Fees</u>                          | <u>= \$ 3,037.50</u> |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 3,037.50</b> |

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

|                               |   |                                    |
|-------------------------------|---|------------------------------------|
| Nina Vallion, JD              | - | Public Arbitrator, Presiding Chair |
| Stephany Adriene Watson, Esq. | - | Public Arbitrator                  |
| Wendy L. Harris               | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**



Nina Vallion, JD  
Chair, Public Arbitrator

Dec 16 - 05  
Signature Date

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Stephany Adriene Watson, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Wendy L. Harris  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

12/19/05  
Date of Service

**ARBITRATION PANEL**

|                               |   |                                    |
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| Stephany Adriene Watson, Esq. | - | Public Arbitrator                  |
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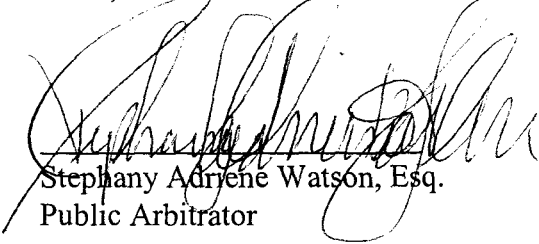
**Concurring Arbitrators' Signatures**

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Nina Vallion, JD  
Chair, Public Arbitrator

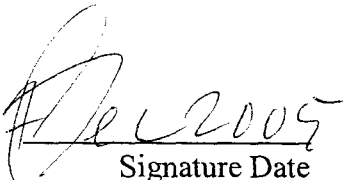
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Signature Date



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Stephany Adriene Watson, Esq.  
Public Arbitrator



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Signature Date

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Wendy L. Harris  
Non-Public Arbitrator

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Signature Date

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10/19/05  
Date of Service

**ARBITRATION PANEL**

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Signature Date

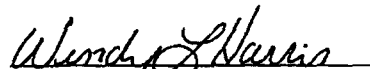
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Stephany Adriene Watson, Esq.  
Public Arbitrator

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Signature Date

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Wendy L. Harris  
Non-Public Arbitrator

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12/6/05  
Signature Date

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12/19/05  
Date of Service